

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Butler

Mail date: March 26, 2004

Opposition No. 91/154201
Opposition No. 91/154470 ☒

Johnson Controls/Prince Corp.

v.

Home Link Services and
HomeCard Company, Inc.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board

Each case identified above had previously been suspended because applicant was involved in a bankruptcy proceeding.¹ This case now comes up on opposer's combined motion, filed 29, 2004, for consolidation of cases and to resume proceedings.

Consolidation

The Board has reviewed each of the above-identified oppositions.. Each proceeding involves the same parties and at least some of the same questions of law and fact.

When cases involving common questions of law or fact are pending before the Board, consolidation of such cases may be appropriate. See Fed. R. Civ. P. 42(a); and TBMP Section 511

¹ In re Home-Link Services, Inc., Case No. 02-35697 (ASD) in the United States Bankruptcy Court, District of Connecticut, New Haven Division.

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(2nd ed. June 2003). The Board, in its discretion, may order cases consolidated prior to joinder of issue (i.e., before an answer has been filed in each case). The Board finds it appropriate to consolidate the above-identified proceedings.

Accordingly, opposer's motion to consolidate is granted, and Opposition Nos. 91/154201 and 91/154470 may be presented on the same records and briefs. The record will be maintained in Opposition No. 91/154201 as the "parent" case, but all papers filed in these cases should include all proceeding numbers in ascending order.

Opposer's motion to resume

In support of its motion, opposer argues that the bankruptcy proceeding that occasioned the suspension of these consolidated oppositions has resulted in an order authorizing the sale of substantially all the property of the estate of Home Link Services to HomeCard Company, Inc. Opposer argues that said property includes the applications involved before the Board. A copy of the court's order, entered on April 11, 2003, and a copy of the Asset Purchase Agreement between Home Link Services, Inc. and HomeCard Company, Inc., indicating an execution date of April 16, 2003, accompany opposer's motion.

The documents submitted by opposer evidence assignment of assets, including all trademarks, from Home Link Services to HomeCard Company, Inc. In view thereof, HomeCard Company, Inc.

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is joined as party defendant. See TBMP Section 512.01 (2nd ed. June 2003).²

Inasmuch as it appears that the applications at issue in these consolidated proceedings are no longer involved in the bankruptcy case, opposer's motion to resume proceedings is granted.

Applicant is allowed until **forty days** from the mailing date of this order to file an answer to each of the notices of opposition.³

THE PERIOD FOR DISCOVERY TO CLOSE: October 10, 2004

30-day testimony period for party in
position of plaintiff to close: January 8, 2005

30-day testimony period for party in
position of defendant to close: March 9, 2005

15-day rebuttal testimony period for
plaintiff to close: April 23, 2005

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

² The purpose of joining an assignee where an assignment occurs subsequent to the commencement of Board proceedings is to facilitate discovery. It is unclear whether Home Link Services still exists and, if so, to what extent (e.g., storage of potentially discoverable documents). If evidence is submitted that Home Link Services no longer exists, the Board may substitute HomeCard Company, Inc. as defendant. See TBMP Section 512.01 (2nd ed. June 2003).

³ This requirement to file separate answers is an exception to the observed procedure for consolidations that filings are to made only in the parent case. It is requested that applicant clearly identify the opposition (perhaps using bold, and including an introductory, identifying sentence) for which each answer is submitted.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

A copy of this order is being sent to each person identified below.

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